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Case No. 93-888

THE SUPREME COURT OF THE UNITED STATES

TERM COMMENCING OCTOBER 4, 1993

BRUCE W. JACKSON and
JEANNETTE L. JACKSON,

Petitioners,

v.

JIM MITCHELL AND
JED DAVIS, P.A.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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91430/r

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STATEMENT OF THE CASE

This case involved no federal issues in the Maine courts. The Plaintiff sued the Jacksons for foreclosure of a mortgage which the Jacksons gave to the Plaintiff as security for payment of legal fees and costs. The Jacksons counterclaimed alleging legal malpractice.

There was no trial. All issues were disposed of on summary judgment. The trial court concluded that the Jacksons' failure to submit an affidavit from a legal expert in support of their claim that the Plaintiff had committed legal malpractice resulted in the absence of any disputed material fact. Therefore, the court granted summary judgment to the Plaintiff on the Jacksons' legal malpractice claim.

The Plaintiffs moved for summary judgment on their foreclosure complaint. The Jacksons opposed it on the basis that the contract for legal

services between the Plaintiff and the Defendants which called for the real property mortgage had been superceded by a subsequent contract for legal services. However, at the same time, they admitted that they had refused to sign the second contract and that there had never been a meeting of the minds with regard to it. Thus, the trial court concluded that the original contract for legal services, secured by the real estate mortgage, was in effect. There being no dispute about the fact that the Jacksons had failed to pay legal fees and costs, the court granted summary judgment.

The Maine Supreme Judicial Court sitting as the Law Court affirmed the trial court judgment. There is no discussion in the Law Court's decision of any federal or constitutional issue of law. That is because no such issue was raised. The Law Court affirmed the summary judgment on the

foreclosure action because it found that the Jacksons' only defense--that the original contract for legal services had been superceded--was "meritless."

With regard to the Jacksons' malpractice counterclaim, the Law Court adopted the "general rule" regarding the necessity of expert evidence in legal malpractice cases. It held that

> expert evidence is required in a legal malpractice case to establish the attorney's breach of duty "except in cases where the breach or lack thereof is so obvious that it may be determined by the Court as a matter of law, or is within the ordinary knowledge and experience of laymen."

Jim Mitchell and Jed Davis, P.A. v. Jackson, 627 A.2d 1014, 1017 (Me. 1993).

The Court concluded that the trial court did not commit reversible error by requiring expert testimony. With no expert testimony, the Law Court said, the Jacksons had failed to establish a genuine issue of material fact.

SUMMARY OF ARGUMENT

The Petitioners have failed to establish the Court's jurisdiction. Rule 10.1(b) requires that the state court of last resort "decided a federal question." That did not happen in this case.

The Petitioners' vague procedural due process argument is meritless. The summary judgment procedure by which this case was decided is one of the procedural foundations of our system of jurisprudence. It provides, and Petitioners availed themselves of, adequate procedural safeguards to meet the requirements of the Due Process Clause.

Because the Petition is frivolous, the Court is asked to award to the Respondent just damages and double costs, pursuant to Rule 42.2.

ARGUMENT

The Petitioners fail to establish this Court's jurisdiction to consider an appeal from the decision of the Maine Law Court. The Petitioners cite Supreme Court Rule 10.1(b) as the basis for the Court's jurisdiction. However, that Rule requires that the state court of last resort "decided a federal question."

Supreme Court Rule 14(h) requires that a petitioner for a writ of certiorari include in the statement of the case a description, with specific citations and quotations, of "the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised."

Although the Petitioners provide a 7-page statement of the case (entitled "Statement of Material Facts"), they entirely fail to meet the requirement of Rule 14(h). This failure results

from the fact that the requirement of Rule 14(h) cannot be met.[1]

The Maine Law Court did not decide a federal question. That Court decided the only issues before it, all of which were state law issues.

The Petitioners make some vague procedural due process argument. Although they do not appear to be making a claim under 42 U.S.C. Section 1983, the reasoning of Section 1983 case law applies. In Zinermon v. Burch, 494 US 113, 125-27, 108 L Ed 2d 100, 110 S Ct 975 (1990), the Court explained the procedural requirements of the Due Process Clause as follows:

> In procedural due process claims, the deprivation by state action of a constitutionally protected interest in "life, liberty or property" is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law....The constitutional violation

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1. Rule 14(k) requires the petitioner to prepare and file an appendix. No such appendix was served on Respondent's counsel.

actionable under Section 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process. Therefore, to determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate....Due process...is a flexible concept that varies with the particular situation. To determine what procedural protections the Constitution requires in a particular case, we weigh several factors:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v Eldridge, 424 US 319, 335, 47 L Ed 2d 18, 96 S Ct 893 (1976).

The State of Maine provides procedures, of which the Petitioners availed themseves, which

clearly meet the requirements of due process. The summary judgment procedure is embedded deeply in federal and state law. It allows a litigant to present his case, through affidavit and otherwise; and the Petitioners availed teimseves of that procedural safeguard.

The requirement, which exists in a majority of jurisdictions, that a legal malpractice complainant present expert testimony, unless the lawyer's negligence is so obvious that it may be determined by the court as a matter of law, does not create a due process violation.

The fact that the Petitioners could not, in the context of a motion for summary judgment, present sufficient evidence to persuade the court that there was a genuine issue of material fact does not amount to a deprivation of due process.

There is no legal or factual basis for this Petition for a Writ of Certiorari. Rule 42.2

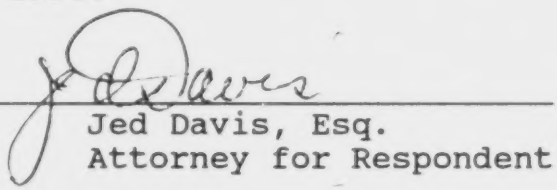
allows the Court, "[w]hen a petition for a writ of certiorari...is frivolous [to] award the respondent or appellee just damages and single or double costs."

CONCLUSION

No federal or constitutional issue was raised or decided by any Maine court. Thus, the requirement of Rule 10.1(b)--that the "state court of last resort has decided a federal question"--has not been met.

No basis has been shown for the exercise of this Court's jurisdiction. Therefore, the Petitioner's Petition for Writ of Certiorari should be denied; and, because the Petition is frivolous, the Court should award to the Respondent just damages and double costs.

Dated: December 21, 1993.



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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 1993, I mailed three (3) copies of Respondent's Brief in Opposition to Petition for Writ of Certiorari by first class mail, postage prepaid, to Bruce W. Jackson and Jeannette L. Jackson, P. O. Box 290844, Port Orange, Florida 32129.

Dated: December 22, 1993.

Jed Davis, Esq.
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